one month. That will mean in effect that the accused is now a free man as a month's time has already elapsed. I direct that the time should run from the original date of conviction.

I rather gather that this particular magistrate does not seem to consider binding over a very serious punishment.

My experience in this country is that being bound over is intensely disliked by accused persons. On the evidence in this case I would consider a binding over for 12 months as too severe a sentence. Had I tried the case myself I might have bound the accused over for three or four months. I reduce it to one month in this case because I want to draw attention to a certain statement in the Magistrate's grounds of judgment.

I refer to the last sentence:—"And in view of the inaccuracies of the accused's statements I convict him and bind him over for one year in the sum of $50/-".

It is not very clear just exactly what the learned trial Magistrate meant by that and how far the inaccuracies in the accused's statements influenced his opinion as to the truth of the complainant's statements. I would point out that at any rate he considered that a *prima facie* case had been made out before he heard the accused's statements at all. But I wish to emphasize for the guidance of all magistrates, and particularly of men who are new to this country and to their work, that it is not sufficient that the learned Magistrate should not believe the story of the defence. That alone would not justify him in convicting the accused. Quite apart from the fact that he does not believe the defence he must be satisfied of the truth of the prosecution story.

I would like to emphasize this as strongly as I can. The fact that I have altered the sentence means that my present remarks will be brought to the notice of this particular Magistrate, but I would like them to reach all Magistrates.

They must keep this clearly in mind that quite apart from what the defence does or does not do, a Magistrate must be convinced of the truth of the prosecution story before he convicts.

I have no evidence in this case that the learned Magistrate convicted merely because he did not believe the accused's statements. But in view of the way he has expressed himself there is the risk that he may have allowed his mind to have been somewhat unduly influenced by his disbelief of the defence story. But I do not think that was the case.

There was adequate evidence—that of two witnesses, complainant and his witness—from which he could find against the accused. I think he merely expressed himself in an unfortunate manner.

I would just like to add that it would be a great help to the Court if Magistrates in writing their grounds of judgment would inform the Court which witnesses they believe, and to what extent, and which they disbelieve, and to what extent.

It would make the hearing of appeals a much simpler matter.

The conviction is confirmed but I direct that the bond be now cancelled as it has already run for over one month.

Conviction confirmed.

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

July 29, 1939.

G. H. SLOT & COMPANY LIMITED

v.

THE REGISTRAR OF TRADE MARKS S.S.

[ORIGINATING MOTIONS Nos. 26 & 27 of 1939]

Prerogative Writs of Mandamus, Prohibition and Certiorari—Administration of Justice (Miscellaneous Provisions) Act 1938 Sec. 7—Rule 2 of the Preliminary Rules of the Supreme Court 1934.

In respect of the Prerogative Writs of Mandamus, Prohibition and Certiorari the Administration of Justice (Miscellaneous Provisions) Act 1938 and the new English Order LIX did not alter the jurisdiction of the Court but merely prescribed a simpler procedure by which the jurisdiction previously exercised should be exercised. By reason of Rule 2 of the Preliminary Rules of the Supreme Court of the Colony the Supreme Court in the Colony should now follow the simpler procedure introduced in England.

ORIGINATING MOTIONS.

Smith (*Hatchard* with him) for the Plaintiffs.

Gibson (Solicitor-General) for the Defendant.

The facts and arguments sufficiently appear from the Order.

McElwaine, C.J.—The Plaintiffs on the 15th July, 1939, took out Originating Motion No. 26 of 1939 for an order calling upon the Registrar of Trade Marks, Straits Settlements, to show cause why a Writ of Mandamus or, alternatively, why an Order for Mandamus should not issue compelling him to accept

the application of the Plaintiffs abovenamed for registration of their United Kingdom Trade Mark No. 603036 being the TWO DUCKS mark for Felt Hats in Class 25 under Part II of the Trade Marks Ordinance, 1938 and to put such trade mark on the Register of Trade Marks kept under the Ordinance and to issue a Certificate of Registration in respect thereof.

On the 24th July they took out Originating Motion No. 27 of 1939 for an order calling upon the Registrar of Trade Marks, Straits Settlements, to show cause why a Writ of Mandamus should not issue compelling him to accept the application of the Plaintiffs abovenamed for registration of their United Kingdom Trade Mark No. 603036 being the TWO DUCKS mark for Felt Hats in Class 25 under Part II of the Trade Marks Ordinance, 1938 and to put such trade mark on the Register of Trade Marks kept under the Ordinance and to issue a Certificate of Registration in respect thereof.

On the first of these motions Pedlow J. gave the plaintiffs liberty to apply for an order for mandamus and on the second the same learned Judge made an order calling upon the Registrar to shew cause why a prerogative writ of mandamus should not issue.

The two proceedings were taken because the plaintiffs were uncertain whether section 7 of the Administration of Justice (Miscellaneous Provisions) Act 1938 (1 & 2 Geo. VI Ch. 63) applies in the Colony.

As no application for registration under Part II of the Trade Marks Ordinance 1938 can, as the law stands at the moment, be made after 31st July, 1939, I delivered an oral judgment on the two points raised, the point of procedure and the point on the interpretation of section 8 of the Trade Marks Ordinance.

Rule 2 of the Preliminary Rules of the Rules of the Supreme Court 1934 made under the Courts Ordinance is as follows:—

> "Where no provision for procedure is made or no appropriate form is provided by these Orders and Rules, or by any law in force in the Colony, the procedure and practice and forms for the time being in force or use in the Supreme Court of Judicature in England shall, as near as may be, be followed and adopted".

In my opinion the Administration of Justice (Misc. Provisions) Act 1938, section 7 does not confer jurisdiction but merely prescribes a simpler procedure by which the jurisdiction hitherto exercised should be exercised. Instead of ordering the writ of mandamus to issue, the Court makes an order requiring the act to be done.

Rule 2 is therefore effective in applying in this Colony the simpler procedure introduced in England.

It was argued by the Solicitor-General that if the Act of 1938 merely effected a new procedure, it was unnecessary to legislate—that this could be done by Rules of Court but in my opinion a bare rule of Court could not affect the Royal Prerogative—an Act of Parliament was necessary to abolish a Prerogative writ.

I therefore think Originating Motion 26 of 1939 was the correct one when it asked in the alternative for an order requiring the act to be done.

Nothing which I have said is intended to apply to Chap. XXXIII of the Criminal Procedure Code.

The plaintiffs applied under section 9 of the Trade Marks Ordinance 1938 to the Registrar of Trade Marks to register a trade Mark which has already been registered in England under the Trade Marks Act 1938, and in support of the application they produced a certified representation of the trade mark and a certificate of the Controller-General of the United Kingdom Patent Office giving full particulars of the Registration of the Trade Mark in the United Kingdom.

This Certificate shewed that the Trade Mark was registered on the 9th December 1938.

Section 19 (i) of the Act of 1938 enacts that when an application for registration has been accepted and has been opposed, or if opposed the opposition has been decided in favour of the applicant, the trade mark shall be registered as of the date of the application for registration, and that date shall be deemed to be for the purpose of the Act the date of registration.

The Registrar of Trade Marks rejected the application on the ground that the 9th December, 1938, appearing in the Controller-General's certificate was really the date the application was accepted by the Patent Office and that the actual registration by the Patent Office did not take place until April, 1939, though that registration was ante-dated in accordance with section 19 of the Act. Consequently, the Registrar of Trade Marks in the Colony was of opinion that the plaintiffs were not "the registered proprietors at the date of the commencement of this Ordinance (1st February 1939) of a trade mark in the United Kingdom by virtue of an entry in the register of trade marks kept under the Trade Marks Act, 1938" because the entry of the plaintiffs trade mark was not actually made in the English register until April 1939.

I think this view is mistaken.

Section 8 of the Trade Marks Ordinance 1938 refers to an English registered trade mark and in my opinion such a mark must be regarded in the same way as it would be in England. In England it is a mark deemed to have been registered on the date on which the Patent Office accepted the application. This ante dating may be a privilege or it may be a disadvantage to the owner of the trade mark, but it is an inherent part or qualification of the property the applicant has acquired by registration.

The Certificate of the Controller-General which has been produced under section 8 is by virtue of section 66, *prima facie* evidence of the entry having been made. It is not conclusive evidence. By this I understand that notwithstanding the certificate it is open to any person to shew that the certificate has been issued under a mistake.

But there is no suggestion that the Controller has made any mistake in making out an extract of his register.

The extract must be presumed to be literally correct until the contrary is shewn, and it appears to comply with section 8 of the Ordinance. I was not referred to, nor have I noticed, a rule or form in the Trade Marks Rules 1938 requiring further particulars than are contained in the Controller-General's certificate produced in this case when it is sought to register a trade mark under Part II of the Ordinance. If further particulars were required an appropriate form could be prescribed under section 73.

Mr. Harrison, the Registrar of Trade Marks, an experienced officer of the Board of Trade who has been seconded to this Colony, swore that "the date 9th December mentioned in Exhibit E.J.B.I. is not the date on which entry was made in the register but the date of the application for registration". I understand months may elapse between the application being accepted and the actual registration but section 19 of the English Act like section 29 of the Colony Ordinance directs that when the application for registration is allowed the Registration dates as from the date on which the application was accepted.

The Colony Legislature must, I think, from its mention of the Act of 1938 be presumed to have known that under that Act registration is ante-dated; and consequently that if it did not intend the English date of registration in law to be the date of registration for the purposes of section 8, it would have said so. Otherwise it must have contemplated the certificate under section 9 being invariably misleading and it would have expressely required the production of some other official document shewing the date on which the actual entry in the register was made. This the Legislature has not done either in the Ordinance or by resolution amending the Rules.

For these reasons, in spite of the able argument of the Solicitor-General I think that this trade mark if otherwise in order must be registered.

The application to register should proceed and the formal order will be that the Registrar of Trade Marks proceed to consider the application on the basis that the trade mark was registered in the United Kingdom before the 1st day of February 1939.

There will be no order as to costs.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

WORLEY, Ag. J.

June 15, 1939.

DEWAN SINGH

v.

M. THYNAPPA LTD. & YEO TECK CHIANG.

[SINGAPORE CIVIL SUIT No. 478 of 1938]

Limitation—Recovery of possession of land—Declaration as to title—nature of possessory right or title under Limitation Ordinance—Limitation Ordinance, Section 25, and Schedule, articles 110 and 112.

A., father of the 2nd Defendant had been in possession of a piece of land without title for about 35 years prior to his death, which occurred on the 22nd July 1926. About a year after the death of A., the 2nd Defendant entered into possession of the land and remained in continuous possession thereof until the 31st March 1938, when he sold and conveyed it to the 1st Defendant. In an action by the administrator of A's estate claiming a declaration that no right or title to the land passed under the conveyance by the 2nd Defendant to the 1st Defendant, and for cancellation of the registration of such conveyance.

Held, upon the preliminary objection that the statement of claim disclosed no cause of action—

(1) That as A's possession was prior to and ceased before 1929 (when Ordinance No. 10 of 1929 was passed), the only effect thereof was to bar the remedy of the true owner, and no title was acquired by A;

(2) That as it was not alleged that the 2nd Defendant entered into possession as representative in interest or trustee of A, there was an abandonment of possession on A's death and the true owner was remitted to his former title;

(3) That as the Plaintiff could only derive title from A, the Statement of Claim disclosed no right or title in him, and his claim for the declaration must fail;